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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ANGELA M. HAMILTON,  
Plaintiff and Respondent,

v.

BRIAN HAMILTON,  
Defendant and Appellant.

A102952

(San Francisco County  
Super. Ct. No. FDV-03-801318)

After a two-day hearing, the trial court issued a three-year restraining order in favor of Angela M. Hamilton (wife) and against Brian Hamilton (husband). The court also ordered that wife have sole legal and physical custody of their child pending an evaluation. Husband appeals contending the orders are not supported by substantial evidence or the requisite findings. We affirm.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

Husband and wife began dating in May 1989 when they were in high school. They married in July 1993. In 1998, they had a daughter.

In her petition, in the supporting declaration filed in anticipation of the hearing, and under cross-examination at trial, wife testified about numerous incidents of domestic violence occurring over the course of their relationship. According to wife:

In the spring of 1990, husband without provocation grabbed wife by the arms and shook her violently, leaving bruises “the entire length of [her] arms.” In the fall of 1990,

husband sprayed engine cleaner into her eyes.<sup>1</sup> In July 1993, during an argument, husband kicked wife in the stomach. In March 1994, after wife angrily confronted husband about finding a woman's phone number on a matchbook from a strip club, husband threw a pair of scissors which cut her in the back. Husband said she "deserved it." Wife received medical treatment for the cut. In December 1997, husband was annoyed as a result of having to move into a new apartment. While cleaning his guns he became agitated, pointed a gun at wife and told her to "get out." Husband also threatened wife's brother, who was visiting. On another occasion, after husband and wife had argued on the phone, wife returned home to discover husband had rigged the door so that a gun would go off if the door opened completely. In October 2001, after an argument, husband grabbed a kitchen knife and began stabbing at the walls of their home and chased wife into their child's room. Wife began kicking and hitting husband and husband responded by kicking wife so hard in the thigh she limped for three days.

Wife's filing of the petition was precipitated primarily by the following series of events: On April 22, 2002, wife told husband she would be filing for divorce. The following day while wife was at work, husband removed their child from preschool, packed most of his belongings as well as many community items, left the house in disarray and went to San Diego. He did not discuss this with wife beforehand, but left a note indicating where they had gone. Husband returned with the child about nine days later. From May to December 2002, husband would take the child to San Diego and keep her there for longer and longer periods if he felt wife was not being sufficiently cooperative. Husband also told wife that if she wanted a divorce, he was to get the child.

In August 2002, husband and wife had a telephone conversation in which husband stated the divorce would "ruin" their daughter and that she was "[b]etter off dead than

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<sup>1</sup> Wife testified that husband's stepfather saw her crying and washing out her eyes after this incident, and that after she told him what happened, he punished his stepson. But husband's stepfather testified that wife had merely been standing next to the truck while husband was degreasing the engine, and some of the fluid had gotten into her eyes. He denied punishing husband.

with divorced parents.” Wife became upset and said she was going to call 911, but husband told her she was “stupid” and he “just wanted to see if [wife] even cared.” According to the petition, on February 10, 2003, during a phone conversation husband threatened to take the child so that wife would never see her again.

On February 11, wife filed her petition requesting the issuance of a domestic violence restraining order. The petition included a request that wife be awarded sole legal and physical custody of the child, with supervised visitation for husband.

Wife admitted there had been no physical violence since the date of separation from her husband. She averred, however, that husband continued to be verbally and emotionally abusive, and to use their child as a weapon to coerce wife to do whatever husband wanted. Wife professed that she was “very afraid of what [husband] would do to [her] if he did not get his way.”

Wife also presented evidence of prescription drug abuse by husband.<sup>2</sup> She stated that husband knowingly took excessive quantities of Vicodin; that he combined the use of Darvon and Vicodin, resulting in seizures; that he secured duplicate prescriptions for Vicodin from doctors in San Rafael and San Diego, as well as from his dentist; and that he took these medications in addition to Demerol injections. Wife also stated that husband would purchase Darvon in Mexico, either when she drove him down to buy it or when he received it from his stepfather. Indeed, husband’s stepfather admitted he would fill husband’s prescription for Darvon in Mexico and ship it to husband. He denied, however, repackaging it to disguise it.

In his responsive papers, husband opposed the restraining order and requested custody of, or reasonable visitation with, his daughter. He denied all of the alleged incidents of domestic violence. He stated that he never sprayed wife with engine cleaner, stabbed her with scissors, struck her, kicked her, or threatened her. He declared this would be contrary to his nature and that wife was making up these allegations merely to

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<sup>2</sup> It is undisputed that husband suffers from migraine headaches.

“gain an advantage in her attempt to gain . . . custody of our daughter.” In fact, husband stated, it was wife who had an “anger management” problem.

At the hearing, husband testified wife was abusive—that she had hit him “many times.” Husband’s stepfather and brother also stated they had witnessed wife being verbally and physically abusive toward husband. Husband’s brother, stepfather and two of his friends also testified that husband is calm, gentle and passive, and has never been known to raise his voice or engage in threatening behavior.

Husband states he fears for his daughter’s safety unless wife is required to take parenting classes and anger management classes. Specifically, husband cited an incident when wife was in their truck, smacking their daughter on the back. Husband went to the truck and took the child into his arms. The child then told him that wife had bitten her on the shoulder; husband saw teeth marks on the child’s shoulder.<sup>3</sup> According to husband, wife was “out of control” and “very angry” and the child was “acting out.”

Husband testified that when they got home, he told wife he was taking the child to San Diego “because of what she did,” and that wife began hitting and kicking him. Husband further testified that because he had to take a week off work to take his daughter to San Diego, he was laid off. On cross-examination, however, husband testified that he left with the child for San Diego a few weeks *after* the biting incident, when wife announced the divorce, and that he was not working at that time.

Husband denied abusing drugs of any kind. Husband testified that he does not smoke, does not drink, does not use illegal drugs, and has never left medications out where his daughter could reach them. In addition, husband testified that wife had recently begun drinking and had come home early in the morning with a hangover, but this had happened just a few times.

With regard to employment, husband testified he has been unable to maintain steady employment due to his chronic migraine headaches and because he was “pretty

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<sup>3</sup> Husband’s stepfather, brother and friend also testified that the child had told them her mother had bitten her.

much follow[ing wife] around” as she changed jobs, moving from San Diego, then to Washington, then to San Francisco. According to husband, after their daughter was born, he was her primary caregiver. In his declaration, he explained that wife “pursued her career while [he] was ‘Mr. Mom.’ ” Husband’s stepfather and an old friend also spoke in glowing terms about husband’s relationship with the child. Wife’s mother testified, however, that in her experience, husband has neither held a job nor taken proper care of the child at home. Wife’s mother also cited one instance when she went to the home and observed husband had “careless[l]y left pill bottles opened within easy reach of his daughter and several were strewn about the floor.” Wife’s father testified that husband neither worked in the job market nor took care of the home. According to wife’s declaration, when husband stayed home with the child, wife would come home to find her “filthy, eating [C]heetos and watch[ing] violent war movies on TV.” Wife stated the house was never cleaned unless wife cleaned it and that husband would assist only if company was coming over.

Finally, there was evidence that husband owned a variety of firearms, which were “precious” to him. The record reflects that husband sold two firearms upon receipt of the restraining order.

Wife admits that she did in fact hit and kick her husband on at least two occasions. One incident occurred in October 2001, as has already been described. Another occurred in April 2002; she testified that she began kicking husband because he was “ripping [their child] from [her] arms.” Wife also admitted that “our daughter not only saw Mr. Hamilton hurt me, but me hurt him, which is extremely unfortunate.” However, wife denies any “anger management problem,” and wife’s coworkers corroborated this. Wife also categorically denied that she ever bit her daughter.

The trial judge delivered a statement of decision from the bench. The court found that domestic violence had been proven by a preponderance of the evidence, that husband’s testimony was not credible, and that the restraining order would issue. The court awarded sole legal and physical custody of the child to wife and allowed husband only supervised visitation, pending a full custody evaluation. The court provided a

lengthy explanation of its reasons for this decision. The court further ordered that the parties share equally in the cost of the evaluation, that wife pay the costs of visitation supervision and that husband pay travel costs associated with his visitation. The court's formal order was filed on April 14, 2003. Husband filed this timely appeal.

## **II. DISCUSSION**

The parties agree that this court should review the restraining order and the custody order under an abuse of discretion standard.

Husband argues first that the trial court abused its discretion by accepting wife's evidence that husband had committed acts of domestic violence—unsupported by medical evidence or other independent corroboration—and ignoring husband's evidence, including testimony from husband's family members and friends. Essentially, husband argues that uncorroborated testimony by wife of domestic violence is insufficient to support the trial court's decision, particularly in light of husband's countervailing evidence. Husband notes that the court commented upon wife's violent propensities and indicated it might have entertained a request for a restraining order against her. Therefore, husband argues, the trial court should be reversed because "a reasonable person reviewing this record would not reach the same decision" and because "the facts as presented . . . show no need for an actual injunction to 'protect' [wife]." We cannot agree.

In this case, there were no third-party witnesses to the incidents of domestic violence perpetrated by husband. Because of the sharp conflict in the evidence, it was for the trial court to determine which version of the events was the more credible. The trial court specifically found husband's testimony "not to be believable" and found that "petitioner and her witnesses [were] far more credible than those offered by [husband]." The court did acknowledge that wife was not "blameless," but noted that no separate restraining order had been requested against her. The court specifically found that wife had proven a history and pattern of domestic violence by a preponderance of the evidence.

We are not free to re-evaluate the evidence presented to the trial court or to second-guess the trial court's findings, as husband requests. The power to judge the credibility of witnesses, to resolve conflicts in the testimony, to weigh the evidence and to draw factual inferences is vested in the trial court. (*People v. Leyba* (1981) 29 Cal.3d 591, 596.) We construe the record in the light most favorable to the trial court's findings. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) And we are duty bound to uphold the trial court's factual findings if they are supported by substantial evidence. (*O'Neill v. Dennis* (1952) 109 Cal.App.2d 210, 212-213.) Here, they are so supported.

Husband contends that the evidence presented by wife was "insubstantial" because it was not corroborated by other witnesses or medical records. But there is no authority for the proposition that uncorroborated testimony cannot provide substantial evidence to support a finding. To the contrary, it is well settled that the testimony of a single credible witness may constitute substantial evidence even if that witness is a party to the action. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1075; *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) In short, "[a] judgment will not be reversed based on an evaluation of the *strength* of the opposing evidence or the relative weakness of supporting evidence when compared to opposing evidence. It can be reversed based only on the *absence or insubstantiality* of supporting evidence, as determined from a review of all related evidence in the record. [Citation.]" (*Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 413, fn. omitted.) The record before us provides more than sufficient evidence to support the trial court's determination that husband must be restrained in order to end his campaign of threats against wife, using their child as leverage.

Husband also contends the trial court erred by awarding sole custody of the child to wife and failing to provide a statement of reasons for awarding custody to a parent against whom allegations of abuse have been made. According to husband, the court's "simply stating that [domestic violence] had been proven by a preponderance of the evidence is not adequate nor detailed enough to support this legal conclusion . . . ."

Husband correctly cites to Family Code section 3011, subdivision (e)(1), which requires that the court “state its reasons in writing or on the record” for awarding custody to a parent against whom allegations of physical abuse have been made. But husband is mistaken in characterizing the court’s order as “simply stating that [domestic violence] had been proven.”

In issuing its decision from the bench, the trial court not only made the specific finding that wife had proven her allegations of domestic violence by a preponderance of the evidence, but made a point of stating that this did not mean it found wife to be “blameless.” The court stated outright it “might have concluded that [wife] should have been the subject of a separate restraining order, but that’s not before me today.” Having acknowledged in this way wife’s acts of physical abuse, the court then went on to explain its reasons for awarding custody to wife.

First, the court stated that husband’s longstanding consumption of narcotics was of primary concern, and that it appeared to the court husband was engaged in prescription shopping. The court went on to say: “[G]iven the frequency and severity of his migraine headaches and the massive doses of painkillers he’s taken in the past to combat this condition, I can’t conclude at this point that he is fit to assume custody of his daughter . . . .” The court also expressed concern about husband’s affinity for firearms. Finally, the court commented that placing the child in husband’s custody would, in effect, be placing her with her paternal grandparents,<sup>4</sup> a result that is not justified by the evidence. Thus, the provisions of Family Code section 3011, subdivision (e)(1) were satisfied.

In closing, husband makes a cursory claim that the court erred in requiring him to share in the cost of the evaluation and to bear the travel costs for visitation with his daughter despite husband’s request that there be a different apportionment. Husband asserts that this issue was raised below—that in his responsive declaration he requested that wife pay “all costs/expenses due to his unemployment.” We have searched in vain

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<sup>4</sup> Husband lives with his mother, stepfather, and brother in San Diego. The home has a bedroom set aside for the child; husband sleeps in the living room.



for that request anywhere in the cited pages.<sup>5</sup> Indeed, our review of the record in its entirety has uncovered no objections interposed to these orders below. Accordingly, the issue has been waived. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.)

### **III. DISPOSITION**

The orders of the trial court are affirmed.

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RIVERA, J.

We concur:

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KAY, P. J.

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REARDON, J.

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<sup>5</sup> Husband did make a request that wife pay his attorney fees and his travel and hotel expenses on the ground that “the temporary restraining order was issued without enough supporting facts.” Husband also describes his difficult financial situation. But the responsive declaration does not contain a request that wife bear all costs and expenses due to husband’s unemployment. Indeed, husband agreed to pay guideline child support and stated that his re-employment was imminent.